

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

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2  
3 RAFAEL MORENO MORALES,  
4

5 Plaintiff

6 v.

7 UNITED STATES OF AMERICA,  
8

9 Defendant  
10

CIVIL 98-2337 (CCC)  
(CRIMINAL 87-0070 (ECC))  
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U.S. DISTRICT COURT  
SAN JUAN, P.R.

11 ORDER

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13 This matter is before the court on second or successive petition under 28 U.S.C. §  
14 2255 filed by petitioner Rafael Moreno Morales on November 30, 1998. (Docket No. 3.)  
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16 The first petition under section 2255 was denied. See Moreno-Morales v. United States,  
17 976 F.2d 724 (1<sup>st</sup> Cir. 1992) (unpublished opinion). A subsequent habeas corpus was also  
18 denied. See Moreno-Morales v. United States Parole Comm'n, 141 F.3d 1149 (1<sup>st</sup> Cir.  
19 1998). Plaintiff filed an amended petition to vacate or set aside judgment on January 14,  
20 2000. (Docket No. 18.)  
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22 Petitioner relates a variation of the "Cerro Maravilla" saga, focusing on the impact  
23 of the grand jury and commonwealth senate testimonies of Miguel Cartagena Flores, which  
24 testimony lead in part to his indictment on February 6, 1984. Petitioner was charged with  
25 conspiracy to obstruct justice and a criminal investigation, conspiracy to give false  
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3 testimony in depositions and before federal grand juries, and conspiracy to suborn perjury.  
4 He was also charged with substantive counts of perjury and suborning perjury for testimony  
5 given before the federal grand juries and depositions taken in the federal civil rights action.  
6 See United States v. Moreno-Morales, 815 F.2d 725 (1<sup>st</sup> Cir. 1987). Petitioner notes that  
7 Miguel Cartagena Flores (hereinafter "Cartagena Flores") was the key witness of the  
8 prosecution in reconstructing what happened on Cerro Maravilla on the day that Arnaldo  
9 Darío Rosado and Carlos Soto Arriví were executed by police officers. Petitioner notes  
10 further that because of Cartagena Flores' testimony and that of José Montáñez, he was  
11 found guilty and sentenced to 30 years in prison.  
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15 Petitioner Moreno Morales makes several arguments in the present habeas corpus  
16 petition. First, he argues that there is "newly discovered evidence" that might "rise to the  
17 level of materiality that would be likely to cause a different result at a new trial." Barret  
18 v. United States, 965 F.2d 1184, 1195 (1<sup>st</sup> Cir. 1992) (citing United States v. Benaventura-  
19 Gómez, 921 F.2d 378, 383 (1<sup>st</sup> Cir. 1990)). This "new evidence" consists of a recent  
20 probe by Puerto Rico's senate conducted on December 2, 1996 in which Cartagena Flores  
21 admitted that he lied during the Cerro Maravilla investigation, specifically during the  
22 federal case relative to petitioner's conviction.  
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3 Secondly, petitioner alleges that the prosecution failed to provide him with several  
4 sworn statements made by Cartagena Flores in violation of Brady v. Maryland, 373 U.S.  
5 83 (1963). For example, it appears from the record that the defense was never provided  
6 with the multiple polygraph tests given to Cartagena Flores. It is not obvious from the  
7 record now before me that the omission of the aforementioned "impeachment evidence"  
8 is not of sufficient materiality to call for a new trial. See, e.g., United States v. Sánchez,  
9 917 F.2d 607, 617 (1<sup>st</sup> Cir. 1990); United States v. Imbruglia, 617 F.2d 1, 4 (1<sup>st</sup> Cir.  
10 1980), cert. denied, 499 U.S. 977 (1991).

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13 Thirdly, petitioner suggests that there might have been prosecutorial misconduct  
14 during his trial. Moreno-Morales claims that the federal prosecutor pressured him by  
15 saying that he was not passing the polygraph tests when he said that he was not at the  
16 scene of the crime and threatened to take away his immunity.  
17

18  
19 In summary, because the record now before the court does not show that petitioner  
20 Moreno-Morales' claims are inadequate on their face, an evidentiary hearing on the merits  
21 of this case is set for November 6, 2000 at 9:30 a.m.

22  
23 That my impartiality not be questioned, the parties are put on notice that in March,  
24 1981, during the investigation of the Cerro Maravilla murders, I briefly held the position  
25 of Trial Attorney, Criminal Section, Civil Rights Division, United States Department of  
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Justice in Washington, D.C. My direct supervisor was Deputy Section Chief Steve Clark who recruited me for the position. Criselda Ortiz was a trial attorney in the same section.

I did not work directly or indirectly on the Cerro Maravilla investigation.

In San Juan, Puerto Rico, this 25<sup>th</sup> day of September, 2000.

  
JUSTO ARENAS  
United States Magistrate Judge

S/C: R. Moreno  
I. Valdivia

SEP 28 2000

